APPEAL NO. 93448

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). On April 27, 1993, a contested case hearing (CCH) was held in (city), Texas with (hearing officer) presiding as hearing officer. The issues to be decided at the CCH were; has the Claimant reached maximum medical improvement; and, b. if so, what is the correct impairment rating for the claimant. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) with a whole body impairment rating of 8% on May 14, 1992. Claimant basically disputes many of the facts and evidence recited by the hearing officer, disagrees with many of the findings of fact and conclusions of law, and requests that we reverse the hearing officer's decision and remand for another CCH. Respondent, carrier, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

It is undisputed that claimant was employed by Cypress Semiconductor Corporation, the employer, as a computer operator working in a "clean-suit" and "clean-room." Claimant did her work standing and leaning over slightly to operate the keyboard of her computer. On (date of injury) as she was leaning over the keyboard she felt a "burning" in her neck and upper back. Claimant's testimony and the medical records reflect that claimant began treating with (Dr. B). On September 17, 1991, Dr. B performed a left shoulder arthrotomy with subacromial depression and rotator cuff repair. The claimant was returned to light duty with the employer on November 11, 1991, for a period of time. Claimant continued under the care of Dr. B until May 1992. Claimant was referred to (Dr. W) by the employer's doctor for evaluation in April 1992. By report dated April 16, 1992, and a TWCC-69 (Report of Medical Evaluation (Dr. W) documented claimant's history and tests, and concluded that claimant's ". . . permanent and partial impairment is related to unrelenting myofascial syndrome, which has not responded to therapy or medications." Dr. W certified MMI on 3/25/92 with 4% whole body impairment rating. In a comprehensive medical report dated May 14, 1992, Dr. B stated that "[claimant] is ready at this time, however, for her impairment rating). I really don't think that there is going to be much improvement and I don't anticipate that [claimant] will ever return to her previous employment." As a result of the May 14, 1992 visit Dr. B completed a TWCC-69 (dated 10-28-92) which certified MMI on 5-14-92 with 8% whole body impairment rating. In what appears to be an accompanying narrative, Dr. B reiterates that she does not believe "that there is going to be much improvement" in claimant's condition.

Apparently, claimant disputed one or both of the above evaluations and the Texas Worker's Compensation Commission (Commission) selected (Dr. JS) as a designated doctor to resolve disputes regarding MMI and impairment. Dr. JS saw claimant on June 18, 1992, and in a narrative report states:

IMPRESSION: 1)Chronic neck and shoulder pain following surgical repair; partial tear of supraspinatus tendon.

Her pain is reported by the patient to be completely disabling and ever present. Her motion is good and the operated and unoperated sides are equal, therefore showing no loss of motion. The AMA Guidelines to permanent impairment, third edition, has a section on shoulder impairment going from page 31 through page 36. This is entirely based on range of motion, therefore my understanding of the AMA guide to permanent impairment would be that this patient would not qualify for a disability from that book.

Dr. JS apparently gave no specific MMI certification or impairment rating. In the following months Dr. JS was provided Dr. B's (and perhaps other) "records including one form [Dr. B] (sic) indicating an 8% impairment with [MMI] 05/04/92." Dr. JS on a TWCC-69 dated 12/16/92 certified MMI on 5/14/92 with 8% whole body impairment. By way of comment Dr. JS states "[i]n Reviewing the measured ranges of motion, I would not disagree with her (apparently Dr. B) evaluation and therefore can not disagree with the 8% impairment rating."

In an August 31, 1992, progress note Dr. B notes that claimant is still complaining of severe pain and that claimant is to see (Dr. CS) "for probably a pain evaluation clinic." By memo dated September 16, 1991, Dr. B states: "I will refer the patient to [Dr. CS] for evaluation and consideration of the pain clinic approach to the patient's myofasciitis (sic)."

In several Specific and Subsequent Medical Reports (TWCC-64), some dated as early as August 1991, Dr. B recounts claimant's progress, or lack thereof. On 8-30-91, claimant was "unchanged since her previous visit." In 10-31-91, the TWCC-64 records claimant "has improved." On a TWCC-64 dated 12-09-92 "Pt is a little worse since her last visit." On a TWCC-64 dated 4-07--92 claimant ". . . is worse from her last visit." By TWCC-64 dated 5-06-92 Dr. B notes "the situation with [claimant] has gotten confusing . . . [and Dr. B] will proceed and go ahead and schedule [claimant] to come in for an impairment rating."

In July and August of 1992, claimant had 16 appointments for physical therapy at (rehab clinic). Most, if not all, of the progress notes are in the record. It is evident from those progress notes that the claimant had some good days and some bad days with the end result being the same; that she continued to have pain with no significant improvement. Claimant dismisses those findings by saying "[i]f this proves anything, it may be that the treatment regime proved to be ineffective overall and possibly inappropriate."

Dr. CS began seeing claimant on September 2, 1992. In a report dated September 2, 1992, Dr. CS's impression was that claimant had; "1. Fibromyalgia syndrome (which the hearing officer determined were a complex of signs and symptoms relating to muscle pain)

2. Status post left shoulder decompression 3. Degenerative joint disease of cervical spine 4. Depression . . . ." Claimant was to be referred to a rehabilitation center day program with a "progressive endurance program." It is not clear how claimant fared in this program, however, by report dated January 14, 1992, Dr. CS noted "[claimant] has not been (sic) a physical therapy program" and that claimant continued to have pain and "burning sensations" into the right arm and hand. Dr. CS's impression was "1. Mild median and ulnar entrapment. 2. Severe myofascial pain. 3. Repetitive overuse syndrome." Dr. CS's plan was "continue to recommend pain management program." Dr. CS in this report discussed in detail the goals of the program. On February 15, 1993, claimant began a course of treatment in a "Pain Management Program" of a hospital rehabilitation center. Emphasis of the treatment plan called for "education in biomechanics, self treatment of myofascial pain, ... improvement of flexibility and range of motion."

On February 19, 1993, as the hearing officer notes, only four days into the course of treatment scheduled to last three weeks, Dr. CS, the then treating doctor, and Dr. JS, the designated doctor, jointly signed a letter which stated:

> Because she is currently in the process of treatment and further improvement is expected, [claimant] in (sic) not considered to be at maximal (sic) medical improvement. As per TWCC definition, a person is considered to be at maximal (sic) medical improvement only when no further significant improvement is expected. We expect that [claimant] will improve subjectively and functionally during her pain management program.

The claimant interpreted the joint letter to rescind Dr. JS's earlier determination of MMI and impairment rating. The hearing officer notes that it is significant that Dr. JS did not see or reexamine claimant since his examination of June 18, 1992, and yet "the designated doctor suddenly believes that the claimant is not at 'maximal' (sic) medical improvement." Claimant in her appeal responds that Dr. JS ". . . had a steady flow of medical information on which to base his decision to rescind MMI." There is no evidence in the record to support claimant's statement other than perhaps Dr. JS's remarks on his April 12, 1993, TWCC-69 where he states:

> I saw this patient only once. 6/18/92. Never again despite dozens of requests for paperwork. [Dr. CS] has continued treating her - again - I saw her only once. I will defer to [Dr. CS's] opinion - I retract my statement of MMI. I don't wish to ever make any more opinions or statement about this once-only patient.

Claimant was discharged from the pain management program on 3-5-93. Dr. CS in a report dated 3-25-93 states that claimant made an "outstanding effort" in the program but, in essence, there was not much, if any, improvement in her condition and that claimant "will not be at [MMI] for approximately the next six months."

At a benefit review conference (BRC) on March 3, 1993, the benefit review officer (BRO) recommended that MMI had been reached on May 14, 1992, with a whole body impairment of 8% as determined by the designated doctor, Dr. JS. On April 9, 1993, the claimant, through the ombudsman assisting her, wrote Dr. JS asking the doctor to complete another TWCC-69 and answer the following questions:

a. Does your letter of 2/19/93 co-signed with [Dr. CS] officially rescind the 12/16/92 Form TWCC 69 Maximum Medical Improvement date of 5/14/92?
b. Is it your opinion that [claimant] has not reached Maximum medical improvement as is stated in your letter of 2/19/93?
c. Does the medical information that you have indicate [claimant] has not reached Maximum Medical Improvement?

By return correspondence dated 4/12/93, Dr. JS marked "Yes" to each of the questions and on the TWCC-69 made the notation quoted above that "I saw the patient only once 6/18/92. Never again despite dozens of requests for paperwork."

The hearing officer in his decision, cited Dr. W's certification of MMI on March 25, 1992, with 4% impairment, Dr. B's, the first treating physician, certification of MMI on May 14, 1992, with 8% impairment, and Dr. JS, the designated doctor, certification of MMI on May 14, 1992, with 8% impairment. The hearing officer concluded that claimant reached MMI on May 14, 1992, with 8% impairment.

The claimant in her appeal, disputed the hearing officer's decision and statement of evidence on a paragraph by paragraph basis. In many instances claimant disputed the hearing officer interpretation of certain evidence and in other cases she disputes the facts. Claimant objects to the decision because "[t]he hearing officer never even mentions that the designated doctor rescinded MMI in his findings of fact (and conclusions of law)." The legal basis of the appeal appears to be one of legal sufficiency and the legal effect of Dr. JS's "rescission" of MMI.

Initially we would note that upon review of the record we find the hearing officer recited the evidence, fairly and in a detailed comprehensive manner. Contrary to the claimant's assertions that the hearing officer was "biased" and "favors the carrier" we find that the evidence was fairly recited as presented by the testimony and documentary evidence. In the last five paragraphs of the statement of evidence, the hearing officer notes that there had been no improvement in claimant's condition since February 1992, that the "health care providers consistently report no improvement," that emphasis had been put on pain management rather than pain relief and that while claimant's condition was bad, ". . . it was not going to get substantially better, and she would have to learn to live with it. That of course is a classic definition of [MMI]." Upon review of the record, we agree that the

various treatments demonstrated no substantial change in condition for the better in the year prior to the CCH. In fact, in some respects claimant's condition seemed to get worse with the more treatment and therapy she received. We do note that in the decision, the hearing officer simply makes a finding of MMI on May 14, 1992 with an 8% whole body impairment rating, without specifying he was relying on the designated doctor's rating or according the designated doctor's report presumptive weight or stating that the presumptive weight of the designated doctor's report had been overcome by "the great weight of other medical evidence to the contrary." Articles 8308-4.25(b) and 4.26(g). Claimant argues that the designated doctor's opinion, including his rescission "has presumptive weight unless overcome by the great weight of other medical evidence to the contrary" and if the hearing officer is basing his decision on Dr. B's rating, "he must specifically set out what exactly constitutes "the 'great weight of the other medical evidence to the contrary that overrules the Desig. doctor' report." We have no disagreement with the claimant's general proposition of the presumptive weight and what would overcome it. We do, however, note that the hearing officer has recited all the medical evidence at some length and in the last five paragraphs of the statement of evidence, discussed in the preceding paragraph, details why the hearing officer believes MMI has been reached. We believe the recitation of the medical evidence, together with the reasons why the hearing officer believes MMI was reached as sufficient to show that MMI was reached on May 14, 1992, and enables us to clearly discern how the hearing officer arrived at his decision that MMI was May 14, 1992, as opposed to Dr. CS's statement, and Dr. JS's attempted rescission, that claimant had not yet reached MMI. *See* Texas Worker's Compensation Commission Appeal No. 93072, decided March 12, 1993, and Texas Workers' Compensation Commission Appeal No. 93077, decided March 15, 1993.

As to the designated doctor's "rescission" of his December 16, 1992 certification of MMI and impairment, we have held in a number of cases, that under appropriate circumstances a doctor can "amend or otherwise correct a previously rendered TWCC Form 69." Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992. Claimant cites Texas Workers' Compensation Commission Appeal No. 92441, decided October 8, 1992, where a designated doctor, after receiving a video showing the employee walking and bending, contrary to the history he had given, changed his rating. We held, in that case, that we cannot say that the doctor was prohibited from amending or changing his report in the circumstances of that case. In Texas Worker's Compensation Commission Appeal No. 92639, decided January 14, 1993, we held ". . . a correction or amendment of the first report generated by a designated doctor, especially when the first document was based upon incomplete or erroneous facts which is done fairly soon after the first report, may be given presumptive weight." In that case the doctor testified that his earlier "certification" did not "include things I later learned." Apparently, in that case, the doctor changed his mind after he reviewed an MRI. In Texas Workers' Compensation Commission Appeal No. 93207, decided May 3, 1993, we recognized that a designated doctor can change or amend his opinion ". . . because of matters coming to his attention

subsequent to his determination of MMI and impairment rating." In a case that has some factual similarities to the instant case, Texas Worker's Compensation Commission Appeal No. 93130, decided April 7, 1993, involved a situation where the designated doctor saw the employee in February and ". . . for unknown reasons he apparently failed to complete the TWCC-69 certifying MMI and impairment until December . . . ." The Appeals Panel in that case cited Appeal No. 92441, *supra*, noting "that the designated doctor's revision was prepared within a short time of the initial submission." In Appeal No. 93130, *supra*, in the nine month intervening time ". . . the claimant had an MRI and myelogram that disclosed herniated and bulging discs at three locations . . . . Thus by the time the designated doctor actually certified MMI, the entire picture of claimant's condition had changed . . . ."

As can be seen in the cited cases where we have approved a designated doctor's change or amendment of an MMI certification and impairment, it has been due to a changed condition, new evidence or medical reports indicating the original certification was no longer valid. In the instant case, like Appeal No. 93130, Dr. JS examined claimant in June of 1992 and rendered a narrative report which might indicate MMI ("No further surgical treatment is recommended . . . she is improving . . . she should completely resolve these symptoms") and zero impairment ("this patient would not qualify for disability . . . ."). Claimant did not continue to improve and remained essentially the same. After receiving medical reports of Dr. B, the designated doctor determined her condition to be the same as when he saw her in June and he adopted Dr. B's MMI date of May 14, 1992, and impairment rating of 8%. Unlike the cited cases where the doctor saw a video of claimant, or received an MRI he did not have when he made his certification or subsequent medical reports, Dr. JS in conjunction with the then treating doctor, Dr. CS, on February 19, 1993, indicated that because claimant was "in the process of treatment and further improvement is expected," claimant was not considered to be at MMI. Claimant states in her appeal that Dr. CS "continually forwarded all of my medical records to (Dr. JS). He had a steady flow of medical information on which to base his decision to rescind MMI." This is not clear from the record and certainly Dr. JS does not say he is changing his certification because of medical records he had received. Rather it appears that Dr. JS was notified in February 1993, that claimant had been admitted to a hospital pain management program and the doctors expected "further improvement." This, in and of itself, is not inconsistent with a finding of MMI on May 14, 1992, and alone does not constitute rescission of the December 16, 1992, certification. It was not until the ombudsman requested a further report and another TWCC-69 that Dr. JS, in effect, threw up his hands and said "[n]ever again . . . . I don't wish to ever make any more opinions or statement about this once-only patient." There was no additional evidence such as a video, additional tests, or reports of a changed condition which caused Dr. JS to "rescind" his certification. Under these circumstances, particularly where claimant has not shown an improvement or significant change since her MMI certification, and absent some changed condition, new tests or reports of changed condition we find that Dr. JS did not effectively rescind his December 16, 1992, certification of MMI on May 14, 1992, with 8% impairment rating. We believe the hearing officer considered all of Dr. JS's reports, including the June

18, 1992 narrative, the December 16, 1992 TWCC-69 and comments, together with the February 19, 1993 letter stating that the pain management program would bring improvement and the April 12, 1993 frustrated response, as a whole. In Texas Workers' Compensation Commission Appeal 92469, decided October 15, 1992, we held that the hearing officer is not limited solely to the designated doctor's latest report and that the hearing officer could consider all of the doctor's reports and read them together as a whole. We find that the hearing officer could have read Dr. JS's reports as a whole, noting that there was no new or changed condition which led to Dr. JS's attempted "rescission" of his December 16, 1992 certification. Obviously of paramount importance to the hearing officer was the fact that claimant's condition, despite physical therapy and pain management was essentially unchanged from early 1992. The hearing officer could have accorded Dr. JS's December 16, 1992, certification of MMI on May 14, 1992, with 8% impairment, presumptive weight. The hearing officer did not state he did so, but nonetheless, his decision is consistent with that approach, is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

As the hearing officer pointed out in the last paragraphs of the statement of evidence, and as we have on occasion held, MMI does not, in every case, mean that the injured worker is completely free of pain or impairment, or that the injured worker is able to return to the prior occupation. Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992; Texas Workers' Compensation Commission Appeal No. 93300, decided June 3, 1993; and Appeal No. 92394, decided September 17, 1992. Similarly continued treatment involving "coping skills" is not contrary to having reached MMI. Appeal No. 93300, *supra*. In this case much of claimant's treatment after September 1992, involved pain management, and programs involved in coping with pain as opposed to curing or improving a medical problem.

Claimant alleges in her appeal that the hearing officer never "mentions that the designated doctor rescinded MMI in his findings of fact" or in his conclusions of law. The detailed and comprehensive statement of evidence would indicate that the hearing officer certainly considered Dr. JS's reports and quoted both Dr. JS's February 19, 1993, letter and his April 12, 1993 response to the ombudsman, in its entirety. The hearing officer is not required to make findings of fact on any specific item that a party may believe should be included. Article 8308-6.34(g) only requires that the hearing officer issue a written decision that includes findings of fact and conclusions of law that support his decision.

In sum, we find that the hearing officer's decision was based on sufficient evidence to support his determinations. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we be warranted in setting aside his decision. In re Kings Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision is affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Robert W. Potts
Appeals Judge